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CITY CLERK

**GENERAL ORDINANCE NO. 11, 2015  
AS AMENDED**

AN ORDINANCE AMENDING CHAPTER 7, ARTICLE 2, RESPONSIBLE BIDDER, SECTIONS 7-80 THROUGH 7-87 OF THE *TERRE HAUTE CITY CODE*.

WHEREAS, the City of Terre Haute expends substantial funds for public works construction and maintenance, a portion of that money being derived from taxes paid by residents;

WHEREAS, the City of Terre Haute seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded City contracts;

WHEREAS, the City of Terre Haute endeavors to identify the lowest responsive and responsible bidder on all City contracts;

WHEREAS, the City of Terre Haute is entitled to state the specific requirements of City contracts and to establish criteria bidders must satisfy to be considered for City contracts;

WHEREAS, the "City of Terre Haute Responsible Bidder Ordinance" assures efficient use of taxpayer dollars and will promote public safety;

WHEREAS, As a response to House Enrolled Act 1019, the Common Council for the City of Terre Haute deems it necessary to amend the provisions contained in Chapter 7, Article 2 to conform with new Indiana Code provisions which specifically relate to *Terre Haute City Code's* definition and application of a "Responsible Bidder."

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Common Council of the City of Terre Haute, Indiana, that:

SECTION 1. *Terre Haute City Code* Chapter 7, Article 2, Responsible Bidder, Sections 7-80 through and including 7-87 are hereby amended by deletion of the stricken text and insertion of the underlined text as follows:

**Sec. 7-80      Purpose.**

The Responsible Bidder Ordinance shall serve to define the terms "responsive and responsible" as used in Indiana Code § 36-1-12-4, regarding competitive bidding.

**Sec. 7-81      Applicability.**

This Article of the *Terre Haute City Code* shall apply when:

- a. The City is seeking a contract or service to perform public work. Public work, in this

context, means the construction, reconstruction, alteration, or renovation of a public building, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by the City under a lease containing an option to purchase; and

b. The cost of the contract or service will be at least one-hundred fifty thousand dollars (\$150,000).

#### **Sec. 7-82 Criteria.**

A "responsive and responsible bidder" shall: meet all the bid and contract specifications, and shall:

a. Affirm compliance with all applicable laws pre-requisite to doing business in Indiana;

b. Produce evidence of a federal employer taxpayer identification number or social security number (for sole proprietors);

c. Confirm that bidder shall not discriminate against an employee or applicant for employment because of race, color, religion, sex, or national origin, gender identity, sexual orientation or disability and that the bidder shall ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, or national origin, gender identity, sexual orientation or disability.

d. Confirm that bidder has not been found in violation of any federal, state or local law, ordinance or regulation with regard to an employee or applicant for employment because of race, color, religion, sex, national origin, gender identity, sexual orientation or disability within the last three (3) years.

~~d.e.~~ Provide the City with certificates of insurance indicating the coverage when such is required in the bid or contract specifications.

~~e.f.~~ Affirm, where worker's compensation insurance is required under the bid specifications, that all employees are (1) covered under a current worker's compensation insurance policy and (2) properly classified under such policy; and also, where worker's compensation insurance is required under the bid specification, submit a copy of the "declarations page(s)" of the contractor's worker's compensation insurance policy if the contractor is insured with a carrier, and any continuation of the worker's compensation insurance "declarations page(s)" which includes the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code; and, upon the City's request, submit a copy of any worker's compensation insurance annual

premium audit documents, and (3) provide to the Board of Public Works and Safety, on formal request from the Board of Public Works and Safety a copy of the "declarations pages" of the contractor's workers compensation insurance policy which includes the name and addresses of the insured, as well as the class codes the compensation premium is based.

f. ~~Indicate compliance with Indiana Code § 5-16-7 et seq., the Indiana Common Construction Wage Act;~~

g. Indicate whether the bidder has been found in violation of any Indiana or federal laws regarding wage rates and wage payments including, but not limited to, the federal Davis-Bacon Act, by the U.S. Department of Labor, the Indiana Department of Labor, an Indiana State Court or a U.S. District Court within the three (3) years preceding the submission of its bid on the public works project;

~~g-h.~~ Submit proof of any professional or trade license required by law for any trade or specialty area in which a bidder is seeking a contract award; and disclose any suspension or revocation within the previous five (5) years of any professional trade license held by the company, or of any director, officer, or manager employed by bidder;

i. At the time of submitting the bid, disclose the name and address of each subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the project, and disclose the amount of each subcontractor's bid to the general contractor; each subcontractor who will perform work valued in excess of the threshold set forth in Section 7-81 b. of this Article shall be required to adhere to the submission requirements set forth herein as though it were bidding directly to the City of Terre Haute, and must file the appropriate required documents at least five (5) days prior to commencement of work by the subcontractor;

~~h-j.~~ Upon bid opening by the Board of Public Works and Safety, the bid recipient shall supply the following information relative to subcontractors:

1. Business name and address;
2. Type of work to be performed and bids submitted; and
3. Statement of acknowledgment that subcontractor will comply with all applicable federal, state and local laws.
4. Subcontractor's answers to all of the information sought in subsection (a) through (k) of this section.

~~i-k.~~ State that individuals who will perform work on the public works project on behalf ~~on~~ of the contractor are properly classified as either (1) an employee or (2) an independent contractor under all applicable state and federal laws and local ordinances;

j-l. Provide a copy of the bidder's written plan for employee drug testing that: (1) covers all employees of the bidder who will perform work on the public work project; and (2) meets, or exceeds, the requirements set forth in Indiana Code §4-13-18-5 or Indiana Code §4-13-18-6;

k.m. Confirms that all apprentices to be used on the project are registered with an apprenticeship and training program approved and registered with the United States Department of Labor, Bureau of Apprenticeship and Training (or any state or federal successor agency). Shall provide evidence of participation in apprenticeship and training programs, applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization. The required evidence includes a copy of all applicable apprenticeship certificates or standards for these training programs.

#### **Sec. 7-83 Certified Payroll.**

All contractors and subcontractors are required to submit to the awarding agency, and General Contractor if applicable, an approved and detailed certified payroll on a weekly basis, unless different payroll reporting requirements are stated under the bid specifications or contract. Approved certified payroll forms include federal form WH-347.

#### **Sec. 7-84 Additional Criteria.**

The City may also request evidence of and/or consider the following factors when identifying responsive and responsible bidders for the purpose of awarding contracts under this Article:

- a. The ability, capacity, and skill of the bidder to perform the contract;
- b. The capacity of the bidder to perform the contract promptly and efficiently, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, and experience of the bidder;
- d. The quality of the bidder's past performance, including performance of previous contracts, whether or not such performance was with the City;
- e. The bidder's default under previous contracts, whether or not such contract was with the City;
- f. The bidder's failure to pay or satisfactorily settle bills due on former contracts, whether or not such contract was with the City;
- g. The previous and existing compliance by the bidder with laws and ordinances

relating to the contract;

- h. The financial ability of the bidder to perform the contract;
- i. A statement regarding and/or disclosure of:
  - 1. Any determination by a court or government agency for violations of federal, state or local laws including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), Common Construction Wage Law, or the federal Davis-Bacon Act;
  - 2. Any findings of "non-responsibility" by federal, state, or local departments;
- kj. Any additional factors the City determines relevant for the contract

**Sec. 7-85      Lowest Bidder Not Chosen.**

When a contract is awarded to a bidder other than the lowest bidder, a statement of the reasons for such award shall be prepared by the City board or entity awarding the contract.

**Sec. 7-86      Multiple Low Bids.**

When two (2) or more responsive and responsible bidders submit the same low bid, the contract shall be granted to the bidder whose headquarters are geographically closest to the City of Terre Haute's corporation boundary; but if both low bidders are headquartered within the City of Terre Haute's corporation boundary, then the winning bid shall be determined by drawing lots in public at a meeting of the Board of Public Works & Safety.

**Sec. 7-87      Access to Public Records Act.**

All requests made by the public for submissions tendered under this Article by a contractor or sub-contractor shall be subject to disclosure pursuant to Indiana Code § 5-14-3-1 et seq., the Indiana Access to Public Records Law.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Section 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of Terre Haute, Indiana and approval of the Mayor and publication as required by law.

Introduced by: Amy Auler Amy Auler, Councilwoman

Passed in open Council this 10<sup>th</sup> day of December, 2015.

Todd Nation Todd Nation, President

ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk

Presented by me to the Mayor this 11<sup>th</sup> day of December, 2015.

Charles P. Hanley  
Charles P. Hanley, City Clerk

Approved by me, the Mayor, this 11<sup>th</sup> day of DECEMBER, 2015.

Duke A. Bennett  
Duke A. Bennett, Mayor

ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk